

10 Show Place
Addington
CHRISTCHURCH

14 July 2016

Committee Secretariat
Māori Affairs
PARLIAMENT BUILDINGS

Tēnā koe i nga ahuatanga o te wa

Te Ture Whenua Māori Bill 2016

Te Pūtahitanga o Te Waipounamu writes in response to the Inquiry into Te Ture Whenua Māori Bill. More than 1.4 million hectares (around five percent of New Zealand's land mass) is Māori-owned land. Around 80 percent of that land is considered under-utilised and the proposed legislation is regarded as being able to enhance its optimum use.

Te Pūtahitanga o Te Waipounamu is a limited partnership, supported by the nine iwi of Te Waipounamu through a Shareholders Council known as Te Taumata. Te Pūtahitanga o Te Waipounamu was launched in July 2014 as the South Island Commissioning Agency for Whānau Ora. Te Taumata has appointed an independent governance board which is responsible for the investment strategy. The name, Te Pūtahitanga o Te Waipounamu, represents the convergence of the rivers of Te Waipounamu, bringing sustenance to the people, and reflecting the partnership's founding principle of whānaungatanga.

Commissioning in the context of Whānau Ora is the process of identifying the aspirations of whānau and investing in them whether they are new or existing initiatives. These whānau-centred initiatives are expected to best reflect progress towards Whānau Ora outcomes. Whānau Ora is an inclusive approach to support whānau to work together as whānau, rather than separately with individual family members. We consider that Whānau Ora outcomes will be met when whānau are:

- Self-managing;
- Living healthy lifestyles;
- Participating fully in society;
- Confidently participating in Te Ao Māori;
- Economically secure and successfully involved in wealth creation;
- Cohesive, resilient and nurturing;
- And able to act as responsible stewards of their living and natural environments

“The bill reflects a policy shift to more clearly support land utilisation as determined by the owners themselves”.

The proposed changes will:

- Support and promote the retention and use of Māori land by its owners;
- Empower Māori land owners to pursue their aspirations for the sustainable development of their land;
- Enable Māori land owners to make decisions without needing Māori Land Court approval and encourage owner participation;
- Respect the intrinsic cultural significance of Māori land; and
- Provide an effective alternative to litigation to resolve disputes.

Te Pūtahitanga recognizes that cultural aspirations are prevalent in Te Waipounamu as indicated by the Whānau Ora Outcome, *Confidently participating in Te Ao Māori*. This is further supported by empirical research (Te Kupenga, Ngāi Tahu Research Centre) and anecdotal evidence from whānau and Te Taumata. This compels Te Putahitanga to place priority on supporting cultural knowledge and practice components through the various commissioning activities. The Whenua Project is part of *He Kokonga Whare* – a health research programme funded by the NZ-HRC. The project aims to conceptualise and explore the historical trauma of land loss from colonisation, and to find culturally relevant solutions to effectively support Maori health and social wellbeing, as well as broader development aspirations

“Tikapa – he rongoā, he taonga, e tangi mā tēnei ka rongo koe i tēnei mea te aroha’

The tears we shed now, in thinking of the loss of not being able to live on the ancestral land – are our taonga, because the aroha and the ancestral connections remains with us still.

Case Study: Whānau Whenua Initiative

The Ngāti Kuia land initiative is not only to advocate for whānau and their land, but it is also about developing relationships with the land, culture and celebrating their Ngāti Kuitanga.

The Ngāti Kuia lands are primarily in whānau ownership or in various types of land trusts. The focus of the initiative is to connect and reconnect whānau to their lands, and to identify and engage with descendants of the lands. The initiative aims to inspire whānau to understand who they are and where they descend from, to promote health and wellbeing. Te Rūnanga o Ngāti Kuia Trust and Kaikaiawaro Charitable Trust are supporting the project. A team of whānau navigators is engaged to assist whānau, to undertake research and to work with key stakeholders to provide scientific data on soil types, land use and GIS mapping. This information will empower whānau to make informed decisions on how best to sustainably utilise their whenua. There are opportunities for economic development on whānau whenua if that is what the whānau want.

This submission is also influenced by evidence from Maire Parewaiterangi Kipa for Te Rūnanga o Ngāi Tahu and Ngā Rūnanga [2458 / 2821].

"I have identified issues after cross referencing Wā Taylor's Lore of the South Island Māori with information I studied out of the Domestic Survey of South Island Māori Settlements" by Sir John Te Herekiele Grace, 1905-1985 : Papers (85-173). I also refer to Wai 27 – the Evidence of Tony Walz Ngāi Tahu Part II Government Health Measures for Ngāi Tahu. The key issues discussed in this evidence are : a) Loss of land through land displacement eroding ancestral connection b) loss of economic sustainability due to natural and man-made disasters and c) loss of housing on Māori land and whānau and hapū inability to influence rebuild".

Specific comments on the Bill

Aronga me ngā matāpono (Purpose and principles) (Clause 3)

We support:

- the aronga and matāpono as they are expressed in te reo Māori, and the principle that the Māori version prevails over the English version
- the principle of autonomy
- the importance of whakapapa in determining beneficiaries and recipients of lands, whether by sale or gift
- the principle of retention
- reference to Te Tiriti o Waitangi rather than the Treaty of Waitangi in the English text.
- the inclusion of a tikanga based dispute resolution service that is well-designed and well-resourced
- the right for whānau to develop their lands if they wish, and the right to leave their lands covered in native flora as is the case for many of the land blocks.

Governance of Māori freehold land

We support the move to a regime of **owner-appointed** governance bodies operating under **owner-approved** governance agreements. Appointment processes must be fair and transparent.

Existing trusts and incorporations

The Crown must ensure that existing ahu whenua trusts or kāinga-noho-anga, are able to transition as simply as possible, with the terms of their existing trust orders or constitutions preserved without causing disruption to ongoing operations, and without cost to whānau.

Option to become a rangatōpu

We are open to the development of rangatōpū, a new type of governance body. Key features that are attractive are that a rangatōpu is a body corporate with perpetual succession, and that the asset base vests in the governance body rather than in the individual trustees.

We urge the Crown to provide education and support for existing trusts to consider the options that the Bill provides at no cost to whānau.

Governance agreements

We support the idea that whānau can custom-design governance agreements (trust deeds) to suit particular needs, such as not having to have an Annual General meeting every year, and that a certain percentage of kaitiaki must reside in Aotearoa.

We urge the Crown to provide education and support for existing trusts and owners of Māori land generally, to understand fully the new provisions in relation to governance agreements, and provide a range of example templates to consider, at no cost to whānau.

Preferred recipients

We support the way in which the Bill stipulates that no-one can be a preferred recipient under the Bill unless they have an association with the relevant Māori freehold land in accordance with tikanga Māori. The design of the Māori Land Service and the dispute resolution regime will be crucial to the success of the new regime in relation to who is an eligible recipient. We understand that the consequences of this change is that any person whether they be whāngai, legally adopted, or biological children of people who do not have a whakapapa connection may not be entitled to succeed to Māori land, if that is what the tikanga of the particular iwi/hapū/whānau dictates. We support the inclusion of post-settlement governance entities to be included in the class of preferred recipients.

Accountability

The Bill continues to provide the Māori Land Court with jurisdiction to investigate governance bodies within prescribed parameters.

Powers, duties and responsibilities of kaitiaki

We support that these duties are intended to be consistent with the powers, duties and responsibilities of other types of governance roles. We strongly support that kaitiaki are not, by reason only of being a kaitiaki, personally liable for obligations of the governance body. We would note, however, that the concept of 'kaitiaki' is not universally accepted and that it might be useful to consider alternative concepts such as tangata tiaki.

New decision making regime

The participation thresholds and quorum requirements should be set out more clearly, *in one place*. We support the inclusion in the Bill of a *table or diagram* that sets out the different thresholds and quorum requirements. We support that the Bill provides greater autonomy for owners of Māori land and their own entities to make final decisions about their land.

Decisions that require a percentage of all owners

We support that decisions to *sell* land ought to have the highest threshold, 75% of all owners, and that owners can make that threshold higher if we like.

Decisions that may be made by a percentage of 'participating owners'

In order to more effectively manage and utilise land we would like to see a process of consultation and dialogue between "participating owners" and all owners to address the practical difficulties associated with owner decision-making for parcels of Māori freehold land.

Māori land register

The Bill establishes a formal Māori land register of Māori land title, ownership, and governance. The establishment of the Māori land register is important because, under the Bill, many of the dealings affecting Māori land title, ownership, and governance will be transacted by the owners themselves and their governance bodies without requiring Māori Land Court orders so they will not be recorded in the records of the court.

The Māori land register will record both legal and beneficial interests in Māori freehold land. Māori freehold land will continue to be subject to, and registered under, the Land Transfer Act 1952. Legal interests in Māori freehold land will be recorded in the land transfer system as well as in the Māori land register. **We urge the Crown to consider carefully the care of the Māori Land Court record. For this regime to be a success, the Māori Land Service needs to be designed by Māori for Māori.**

Status of Land – General Land Owned by Māori

The intention to exclude General Land Owned by Māori and the impacts of ahu whenua trusts established under the 1993 Act requires further consultation and discussion.

Dispute resolution

We support the formal establishment of an alternative dispute resolution mechanism for disputes about Māori land, and that the approach to dispute resolution is based on a process to assist whānau to resolve disagreements and conflicts in accordance with the tikanga, values, and kawa of the relevant whanau both as to process and in substance.

We support that the Bill makes it mandatory for certain disputes to be referred to dispute resolution before the court has jurisdiction to consider them on a litigated basis, such as disputes over whether a person is a whāngai or whāngai descendant. **We recommend that the Alternative Dispute Resolution process be administered through the Māori Land Service and that it be offered to Māori landowners free of charge.**

Māori Land Court

We support that the Māori Land Court remains a key institution for the determination of matters relating to Māori land. Both the Māori Land Court and the Māori Appellate Court are continued under the Bill. We also support that the Special Legal Aid fund be continued.

We recommend that

1. Access to development finance for landowners be addressed a matter of urgent attention.
2. That papakāinga be rate free; that all rates arrears on Māori land be waived, and that unutilised and unoccupied Māori land be exempt from rates. Precedent wording for rating exemption can be found in Te Awa Tupua (Whanganui River Claims Settlement) Bill 2016, (land that is part of the Whanganui River and vested in or acquired by Te Awa Tupua is 'fully non-rateable for the purposes of the Local Government (Rating) Act 2002).'

3. That **no more** Māori land (not just reservations) be taken for public works – enough has been given.
4. That a specific fund be set aside and administered by the Māori Land Service for the purpose of enabling the ‘unlocking’ of landlocked land.
5. That sufficient funding is provided to ensure the successful implementation of the Act, particularly in relation to the setting up of the Māori Land Service.

Māori Land Service (MLS)

We are aware that work continues on the design of the MLS. We strongly encourage the Crown to set out clearly what services are going to be delivered by the MLS, who will deliver those services, and the timetable for the delivery of those services. We seek that those services be delivered at no cost for Māori land owners. **We urge the Crown to work collaboratively with iwi to co-design the operation of the MLS, by Māori for Māori.**

Impacts of the reforms on administering Marae

There are significant changes in the way that Reservations (Whenua Tāpui) are to be administered – bringing them in line with other types of reserves. There has been insufficient consultation and engagement on the impacts of the reforms on Marae and other reservations.

Other matters

There is considerable information pertaining to the powers, duties and responsibilities in reference to Local Government and City Councils and Regional Council which should be considered in further development of the Bill. We believe it would be helpful to also establish Resource Management Act frameworks for the management of land, water and other natural resources that impact on the ability of iwi to exercise its rights and interests.

Te Ture Whenua ‘Unclaimed Money’: the question is raised from whānau, as to when we have tupuna who have been sitting in this listings for up to two generations where is the interest rate of these dividends going?

There is a broad range of legislative requirements that relate to how we are able to give effect to our responsibilities as rangatira and kaitiaki for whenua, how that is guided to educate is critical for my generation and the generation after me .

Summary of key concerns and recommendations

We urge the Crown to do its utmost in providing education and support for owners of Māori land and potential owners of Māori land to fully understand fully the opportunities and risks posed by the reforms, including the impact on trusts established over General Land owned by Māori, and on marae and other reservations. This education and support should be provided in a number of ways (not just in brochures/booklets) and be free of charge.

The participation thresholds and quorum requirements need to be set out more clearly, in one place. We strongly support the inclusion in the Bill of a table or diagram that sets out the different thresholds and quorum requirements.

We support the development of an alternative dispute resolution regime (ADR), and recommend that a flow chart diagram be included in the Bill to illustrate how and when the ADR will be triggered. We urge the Crown to provide these services free of charge.

We urge the Crown to adopt a collaborative approach with Iwi Leaders in continuing work on the 'enablers workstream'. The provisions in the Bill relating to rating and valuation, landlocked land, Public Works Act are appreciated, but do not go far enough.

We urge the Crown to consider carefully the care of the Māori Land Court record.

For this holistic regime to be a success, the Māori Land Service needs to be well-designed and well-resourced. We urge the Crown to work collaboratively with iwi to co-design the operation of the MLS, by Māori for Māori.


Finally, Māori land owners should be able to see the benefits of development within their lifetime. The legislative instruments that should have protected Māori land have failed whānau, and the owners of Māori land who are criticised for their management and protection of land which is deemed uneconomic.

"It is vital to our tribal identity and resilience that future generations are confident enough to be kaitiaki (guardians) of our kāinga (homesteads), mahinga kai (food gathering activities) and tangihanga (burial ceremonies) so that cultural identity to our whenua (lands) and marae are protected for future enjoyment¹".

Contact details for this submission are:

- Helen Leahy, Chief Executive Officer, Te Pūtahitanga o Te Waipounamu (Helen.leahy@teputahitanga.org)
- Te Pūtahitanga o Te Waipounamu, Ground Floor, 10 Show Place, Addington, Christchurch. Phone: 0800 187 689

Heoi ano



Helen Leahy
Pouarahi / Chief Executive

¹ Maire Parewaiterangi Kipa for Te Rūnanga o Ngāi Tahu and Ngā Rūnanga [2458 / 2821].